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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/829,035   | 04/21/2004  | Gary Damon           | 1919920/58700       | 7450             |
| 26386  | 7590        | 11/08/2005           | EXAMINER            |                  |
| DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.<br>THE FINANCIAL CENTER<br>666 WALNUT STREET<br>SUITE 2500<br>DES MOINES, IA 50309-3993 |             |                      | KENNEDY, JOSHUA T   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3679                |                  |

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/829,035

Applicant(s)

DAMON, GARY

Examiner

Joshua T. Kennedy

Art Unit

3679

JK

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/21/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

Claims 1-18 have been examined.

### ***Specification***

The disclosure is objected to because of the following informalities:

Page 5, Line 15: "slopped surfaces" should be -- sloped surfaces--.

Page 5, Line 21: "This allow" should be --This allows--.

Appropriate correction is required.

Claims 2-18 are objected to because of the following informalities:

Claims 2-18: "The invention" should be changed to --The universal weed cover system--.

Claim 6, Line 1: "sail panels" should be --said panels--.

Claim 9, Line 2: "on aid panel" should be --on said panel--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claim 1-9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (US 4,497,472).

As to Claim 1. Johnson discloses universal weed cover system for surrounding a series of posts extending upwardly from the ground so as to protect the area adjacent to the posts, comprising:

a plurality of generally rectangular panels (B) adapted for mating alignment with each other;

at least one cut-out section (42) in said panels conforming generally to the shape of the posts; and

wherein when said panels are matingly aligned adjacent to the posts to substantially cover the ground around the post and protect from undergrowth (Col 2, Lines 20-25).

With respect to the "guardrail" recitation, such is merely the recitation of but one possible field of intended use, which fails to patentably distinguish one post from any other post.

As to Claims 2 and 3. Johnson discloses said panels having two opposing cut-out sections (42) that are linearly staggered (Fig 3).

As to Claims 4 and 5. Johnson discloses said panels further comprising slots (44) along one edge wherein said panels can be fastened to each other with fasteners (48)

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secured through said slots; said slots are elongated to allow for expansion and contraction of said panels in response to changes in temperature (Col 3, Lines 61-64).

As to Claims 6 and 7. Johnson discloses said panels further comprising an arc shaped ribbed section (34,36) for strengthening said panels and/or for facilitating water drainage (Col 3, Lines 40-47).

As to Claims 8 and 9. Johnson discloses said panel further comprising a sloped surface (38,40) along the fore and aft edges of said panel for facilitating drainage and/or for conforming to the shape of the ground,

As to Claim 11. Johnson discloses said panel further comprising a center crease to camber the panel (Examiner considers the apex of the two sloped surfaces 38 and 40 to form a center crease, cambering the panel).

As to Claims 12 and 13. Johnson discloses a cover (C) for covering any gap between the post and said panels; further comprising a flexible flap for securing said cover to the post (Col 4, Lines 12-26).

As to Claims 14 and 15. Johnson discloses said panel being made of a flexible material, specifically plastic (Col 3, Line 67-68; Examiner considers vinyl to be a flexible plastic).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson as applied to claims 1-9 and 11-15 above, and further in view of Kovach (US 4,478,391).

As to Claim 10. Johnson discloses a weed cover significantly as claimed but does not disclose the sloped surfaces further comprising curved edges.

Kovach teaches a similar fence protector having curved ends (34,36) "to add strength to the overall section" and assist in locking the fence protector against lateral displacement (Col 3, Lines 17-32). It would have been obvious to one of ordinary skill in the art to modify the weed cover of Johnson to include curved ends as taught by Kovach to add strength and to lock up the fence protector against lateral movement and foreign objects getting underneath the cover.

As to Claim 18. Johnson discloses a weed cover significantly as claimed but does not disclose a clip to secure said plurality of panels to each other.

Kovach teaches a similar fence protector having clips (44) which "are pushed through the aligned openings so as to lock the sections together... [and] it is still possible for limited rectilinear movement between the sections to take place" (Col 2, Lines 50-56 and 65-68). It would have been obvious to one of ordinary skill in the art to modify the weed cover of Johnson by providing a clip as taught by Kovach to permit the locking of the sections together while allowing limited rectilinear movement between the sections to take place as well as to facilitate the installation is possible without need of any tools since the clips snap into place.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

As to Claims 16 and 17. Johnson discloses a weed cover significantly as claimed but does not disclose said plastic being high-density polyethylene plastic, which is substantially recyclable. However, Johnson does teach that the edging strip may be constructed of other plastic materials, aluminum and the like (Col 4, Lines 4-6). Further, it is well known to conserve energy and environmental resources by using recyclable materials. Accordingly, it would have been obvious to one of ordinary skill in the art to make the weed cover of Johnson out of high-density polyethylene plastic, which is substantially recyclable in order to promote environmental conservation.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 3,806,096 to Eccleston et al and US 5,660,374 to Dayberry cited to show a similar weed cover assembly having cutout sections, fastened together, and having curved ends.

US 3,822,864 to Keys cited to show a similar weed cover assembly having cutout sections, fastened together, and having flexible flaps secured to the posts.

US 5,039,065 to Denton cited to show a similar weed cover assembly having cutout sections, fastened together, and having flexible flaps secured to the posts.

US 6,527,255 to O'Berry cited to show a fence post protector having cutout sections fastened together.

US 6,837,487 to Oden et al cited to show a similar weed cover assembly having cutout sections, fastened together, and having a center crease.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTK  
11/2/05

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial "D".

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600